IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7908 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ICHHUBHAI PRANJIVANDAS BERAWALA

Versus

GOVERNMENT OF INDIA, NOTICE TO BE SERVED THROUGH

Appearance:

Mr. Yogesh M.Thakkar for Petitioner

MR YN RAVANI for Respondent No. 1-absent.

Mr. I.M.Pandya, ASSTT. GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 17/01/2001

ORAL JUDGEMENT

By means of this petition, a direction to the Central Government and State Government has been

sought to give Swatantra Senani Sanman pension under the Freedom Fighter Pension Scheme, 1972 to the petitioner from the date of its implementation i.e. from the year 1972. Earlier, the petitioner had filed Special Civil Application no. 9818 of 1992 for a direction to the State Government to decide the representation of the petitioner and this Court had directed the State Government to decide the representation in light of the spirit of the scheme. Accordingly, the State Government rejected the application of the petitioner merely on the ground of insufficiency of proof. Then, the petitioner has filed petition being Special Civil Application no. 7908 of 1994. In that petition filed by the petitioner, the petitioner has produced a certificate of Manilal K Parikh which is placed at page no.28 certifying that during the freedom movement, the petitioner had undergone imprisonment for a period of five years. He has also certified that the petitioner Icchubhai Pravinbhai Berawala had taken an active part in Quit India Movement and that he had also remained underground for a period of three years. An identical certificate from Maneklal Gandhi has also been placed at page no.31 certifying that the petitioner had remained underground for more than six months during the year 1942 till the end of 1994. The petitioner has also produced a certificate of Mr. B.P.Mody, a Former MLA who has certified that the petitioner had participated in Quit India Movement and had remained underground for a period of three years. There is another certificate at page no.37 given by Navalchand M Kansara who was a former MLA certifying that the petitioner had remained underground for a period of three years. This Court has recorded its opinion that there is an overwhelming proof that the petitioner is entitled to pension under the scheme of 1980. In that view of the matter, the order dated 3.6.94 of the State Government was set aside and the application of the petitioner was directed to be forwarded to the Central Government. The State Government was directed to report the case of the petitioner to the Central Government within two weeks and the Central Government was directed to pass appropriate orders within a period of four weeks after receipt of the receipt from the State Government. In the operative portion of the order, this Court directed that the individual Special Civil Applications be treated as applications under the Scheme of 1980, irrespective of the dates on which they were made and all the documents alongwith other Special Civil Applications were directed to be taken as documents annexed to the applications. If the individual petitioners were also permitted to submit further documents before the actual scrutiny as contemplated under clause (1) of the Scheme

of 1980. The State of Gujarat was directed to scrutinise every application and the evidence produced in support of the claim and dispose of them within a period of six weeks keeping in view the laudable and sacrosant object of the scheme as observed in the judgment and also various judgments of the Apex Court. The Central Government, after receipt of the state verification and entitlement to pension report of the individual claimants, shall scrutinise and if found eligible, shall grant pension within a period of four weeks from the receipt of the said report from the State Government. By a letter dated 1.11.96, the petitioner was informed that the Central Government in absence of jail certificate and record has rejected the application of the petitioner. Therefore, the petitioner has moved this Court for revival of the said petition and the petition has been revived.

2. The contention of the learned counsel for the petitioner is that the Central Government has not communicated the complete order to the petitioner whereby his claim has been rejected. The learned counsel for the Central Government made a statement that the previous counsel also made various efforts to obtain orders of the Central Government and he also made efforts to obtain complete orders passed by the Central Government, but there is no response. The learned counsel for the petitioner contended that it appears that the Central Government has rejected the claim of the petitioner only on the ground of insufficiency of evidence. This Court has already recorded a finding that the petitioner is eligible for the pension on the basis of the evidence produced before this Court. The Central Government has not filed any appeal against the findings recorded by this Court in its judgment dated 21st October, 1994. Thus, the findings recorded by this Court in its judgment dated 21st October, 1994 are final. The Central Government has commited a manifest error on the face of the record in rejecting the claim of the petitioner on the ground of insufficiency of evidence and particularly in that respect, this Court has already recorded a finding that the evidence produced by the petitioner was sufficient to hold that the petitioner was entitled for the pension under the Scheme. He also relied on the decision of this Court in the case of Manibhai Nathaji Pandya vs. Government of India and others reported in. 1998(1) GLR, 715 in which it has been held that the Central Government was not justified in denying the pension to the petitioner by rejection the application for pension.

3. I have heard the learned counsel for the parties and perused the relevant record. As this Court has already recorded a finding that on the basis of overwhelming proof, the petitioner is entitled to pension under the scheme of 1980 and no appeal has been filed by the Central Government before the appellate forum. The findings recorded recorded by this Court vide order dated 21st October, 1994 are final. The Central Government had no option but to accept the findings of this court and to grant pension under the scheme of 1980. It appears that after perusing the certificates produced by the petitioner, the petitioner fulfills necessary requirements under the scheme and is eligible to get the pension under the scheme. The decision rendered by the respondents rejecting the application of the petitioner is illegal and bad in law as the respondent Central Government has rejected the application of the petitioner only on the ground of insufficiency of evidence. That evidence has already been scrutinised and examined by this Court.

4. In the facts and circumstances of the case, this petition deserves to be allowed and is accordingly allowed. It is declared that the petitioner is entitled to get pension under Swatantra Senani Sanman Pension Scheme, 1980 with effect from the date of his application i.e. 12.3.1990. The respondents are directed to pay to the petitioner, the pension under the aforesaid scheme with effect from 12.3.1990 and pay all arrears of pension within three months from the date of receipt of writ of this judgment. The respondents are also directed to continue to pay in future in accordance with the scheme. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

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